

Appln No. 09/851,708

Amdt date April 28, 2004

Reply to Office action of January 30, 2004

REMARKS/ARGUMENTS

In the Office action mailed January 30, 2004, the specification is objected to, the drawings are objected to, and the claims are rejected under 35 U.S.C. § 185. The Assignee of the application thanks the Examiner for attention to the application.

The specification is objected to because the reference numeral "19" on page 5, line 26 should be "119". The specification is now amended to replace "19" with "119".

The drawings are objected to because they do not include the reference sign "63" indicated on page 8, line 31 of the specification. A review of the specification indicates that the specification is in error, and not the drawings, namely that the operation node 63 indicated on page 8, line 31 of the specification should be indicated as operation node 61. The specification is now so amended, and accordingly corrected drawings are not required.

Claims 1-31 are rejected under 35 U.S.C. § 185. In particular, the Office action states that corresponding Japanese Patent Application JP 2001168611 and European Patent Application EP 01304884 were both filed within six months of the U.S. filing date and before applicant was granted a foreign filing license.

In brief, the foreign filing license granted to the priority provisional patent application, U.S. Provisional Patent Application No. 60/209,340, is a sufficient foreign filing license for the above-referenced Japanese and European patent Applications. The provisional patent application received a

Appln No. 09/851,708

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foreign filing license August 15, 2000, prior to the filing of the foreign applications. A copy of the foreign filing license for the provisional application and the provisional application are attached hereto.

The present application claims priority to U.S. Provisional Patent Application No. 60/209,340. The present application, and the foreign applications which are believed to correspond to the present application, merely provides modifications, amendments, and/or supplements which do not change the general nature of the invention and which consist of illustration, exemplification, comparison, and/or explanation of subject matter discussed in U.S. Provisional Patent Application No. 60/209,340. Accordingly, pursuant to 35 U.S.C. § 184 and 37 C.F.R. § 5.15(a)(2) it is believed that the rejection under 35 U.S.C. § 185 is improper.

In more detail, 35 U.S.C. § 185 provides in part

[n]otwithstanding any other provisions of law any person, and his successors, assigns, or legal representatives, shall not receive a United States patent for an invention if that person, or his successors, assigns, or legal representatives shall, without procuring the license prescribed in section 184 of this title, have made, or consented to or assisted another's making, application in a foreign country for a patent or for the registration of a utility model, industrial design, or model in respect of the invention.

35 U.S.C. § 184 provides, in part,

[e]xcept when authorized by a license obtained from the Commissioner of Patents a person shall not file or cause or authorize to be filed in any foreign country prior to six months after filing in the United States

Appln No. 09/851,708

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an application for patent or for the registration of a utility model, industrial design, or model in respect of an invention made in this country.

However, 35 U.S.C. § 184 continues in stating that

[t]he scope of a license shall permit subsequent modifications, amendments, and supplements containing additional subject matter if the application upon which the request for the license is based is not, or was not, required to be made available for inspection under section 181 of this title and if such modifications, amendments, and supplements do not change the general nature of the invention in a manner which would require such application to be made available for inspection under such section 181.

35 U.S.C. § 185, § 184 and § 181 are further discussed in 36 C.F.R. § 5.11 et seq. In particular, 37 C.F.R. § 5.15(a) states that "[a]pplications or other materials were reviewed pursuant to §§5.12 through 5.14, which were not required to be made available for inspection by defense agencies under 35 U.S.C. 181, will be eligible for a license of the scope provided in this paragraph." As indicated in the foreign filing license granted to the provisional application, "[t]he scope and limitations of this license are set forth in 37 C.F.R. 5.15(a)...." Foreign filing license for Provisional Patent Application No. 60/209,340.

Pursuant to 37 C.F.R. § 5.15(a)

[t]his license permits subsequent modifications, amendments, and supplements containing additional subject matter to, or divisions of, a foreign patent application, if such changes to the application do not alter the general nature of the invention in a manner which would require the United States application to

Appln No. 09/851,708

Amdt date April 28, 2004

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have been made available for inspection under 35 U.S.C. 181. ...[t]his license includes authority: (2) to make amendments, modifications, and supplements, including divisions, changes or supporting matter consisting of the illustration, exemplification, comparison, or explanation of subject matter disclosed in the application...

Any differences between the provisional patent application, for which the foreign filing license was granted, and both the present application and the foreign applications are believed to comprise at most "modifications, and supplements consisting of the illustration, exemplification, comparison, or explanation of subject matter disclosed in the" provisional patent application. Accordingly, the foreign filing license granted for U.S. Provisional Patent Application No. 60/209,340 applies to the foreign filed applications, and the rejection under 35 U.S.C. § 185, in view of the foreign filing license granted the provisional patent application, is improper.

Turning now to a comparison of the provisional patent application, a copy of which is attached hereto, on the present application, it is respectfully noted that in the twenty-five page provisional patent application FIG. 1 corresponds to FIG. 2 of the present application, FIG. 2 corresponds to FIG. 3 of the present application, FIG. 3 corresponds to FIG. 4 of the present application, FIG. 4 corresponds to FIG. 5 of the present application, FIG. 5 corresponds to FIG. 7 of the present application. FIGS. 1, 6, 8, 9, and 10 are of flow charts illustrating, exemplifying, and explaining the subject matter disclosed in the provisional application, and the text of the application is merely a rewritten form of the provisional patent

Appln No. 09/851,708

Amdt date April 28, 2004

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application. The content of the foreign filed applications are believed to correspond to the present application.

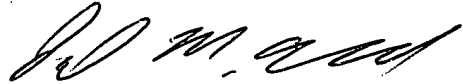
Accordingly, the foreign filing license granted with respect to Provisional Patent Application Number 60/209,340 applies to the corresponding foreign filed patent applications, and to the present application. Accordingly, the rejection under 35 U.S.C. § 185 is, in this case, improper, and the rejection is respectfully requested to be withdrawn.

If the Examiner has any questions regarding this subject matter, the Examiner is respectfully invited to call the undersigned representative of the Assignee of the application.

Respectfully submitted,

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By



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DMC/rmw

Enclosure: Copy of Provisional Application

No. 60/209,340 (26 pages)

Copy of filing receipt of

Provisional Application No. 60/209,340

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